

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 8TH FEBRUARY 2007 / 19TH MAGHA 1928

CrI.MC.No. 1264 of 2005-C

**CMP.11800/2001 of JUDL. MAGISTRATE OF FIRST CLASS COURT-
II, NEYYATTINKARA**

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PETITIONER: COUNTER PETITIONER 2 AND 3.

**1. ALEX SAM CHRISMAS, ASRAYA, MANAVELI,
MULLUVILA P.O. THIRUPURAM, NEYYATTINKARA.**

**2. N.L.SANAK, KUNNU BUNGLOW,
AYANIKATTUKONAM, MADAVUR,
PALLIKKAL P.O. THIRUVANANTHAPURAM.**

**BY ADV. SRI.V.N.ACHUTHA KURUP (SR.)
SRI.BINDU SREEKUMAR
SRI.K.G.RENGANATH**

RESPONDENTS: COMPLAINANT AND STATE.

**1. PRABHAKARAN, S/O.CHELLAN,
KUNNUVILA MEKKU CHARIVU VEEDU,
KANCHAMPAZHANJI P.O. THIRUPURAM,
NEYYATTINKARA.**

**2. THE STATE OF KERALA, REPRESENTED
BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**

**R2 BY PUBLIC PROSECUTOR MR. P.M.A.KALAM
R1 BY SRI.K.R.NANDAKUMAR
SRI.B.RAJEEV KOYICKAL**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 28-8-2006, THE COURT ON 08-02-2007 PASSED THE
FOLLOWING:**

K.R. UDAYABHANU, J.

CRL.M.C.NO.1264 OF 2005

DATED THIS THE 8TH DAY OF FEBUARY 2007

ORDER

The petitioners/accused in C.M.P.No.11800/2001 the private complaint filed in the Court of Judicial Magistrate of First Class-II, Neyyattinkara are the two teachers of M.V.Higher Secondary School, Arumanur, Neyyattinkara, who have sought for getting the proceedings initiated against them quashed alleging that the same amounted to abuse of process of the court. The court below after conducting enquiry as per Section 202 Cr.P.C. has issued summons to them with respect to the offences under Sections 120B, 306, 324 read with Section 34 I.P.C.and Section 3 (x) of the Scheduled Castes & Scheduled Tribes(Prevention of Atrocities) Act. The proceedings were originally initiated against the Principal and the present petitioners as accused. The court below took cognizance of the offences against the petitioners alone and the complaint against the Principal was dismissed.

2. The facts of the case are as follows:

On 7-3-2001 at about 7.30 p.m. a complaint was lodged before the local police by the complainant/first respondent alleging that his son Vinod P.K. @ Vineesh, a student of Std.IX of the above mentioned school committed suicide by hanging on the branch of a cashew nut tree standing on the nearby compound of his house. The incident took place at about 3.30 p.m. It was alleged that about two weeks prior to the date of incident, the complainant had gone and met the Principal of the school/1st accused in the complaint and the Principal had told that his son Vinod cannot continue in the school on account of indiscipline and bad conduct. But he assured the Principal that he will see that Vinod would hereafter be a disciplined student. It was alleged in the above criminal complaint that his son died on account of the harassment at the instance of the Principal/1st accused and the class teacher/3rd accused, and the N.C.C.teacher, the second accused, who are the first and second petitioners herein. The case was registered under Section 174 Cr.P.C. as Crime No. 24/2001. The Sub Inspector, who investigated the matter filed a refer report. The Superintendent of Police subsequently directed further investigation by the Circle

Inspector of Police. He has also submitted a refer report. In the meantime, the complainant had issued a lawyer notice to the accused demanding a sum of Rs.20 lakhs as compensation alleging physical torture and ill-treatment amounting to infraction of the provisions of S.C.&S.T.(Prevention of Atrocities) Act also. It was pending investigation by the Circle Inspector of Police that the complainant has filed the private complaint alleging the offences under Sections 306 I.P.C.and Section 3(i) (x) of the S.C. & S.T.(Prevention of Atrocities)Act as well.

3. It is submitted by the petitioners that the deceased Vinod was in love with a girl student by name Anu, a student in the same class and on 22-02-2001 the deceased took Anu and another girl student by name Varalakshmi in the autorikshaw of his father and took them to several places. On getting informed about the above incident, the Principal summoned the guardians of the students and warned that such conduct would not be tolerated. Thereafter on a Sunday, Vinod and the above girl student Anu entered the class room and was inside the class for sometime and as intimated by Raveendran, a shop keeper, near the school, the peon of the school asked them to leave the school

premises. The matter was reported to the Principal and the Principal directed the deceased and the girl student to bring their guardians and the matter was also intimated to Nisha, the elder sister of Vinod who was a student in the same institution. The complainant when came to know of the incident beat up Vinod. The mother of the girl student insisted to issue Transfer Certificate to her daughter as her repeated warnings did not yield any result. Vinod did not bring his guardian. After hearing, demand of Anu's mother for T.C., he left the school telling that he will not bring his father and that he knew what is to be done. It is pointed out that the allegation that the accused abused Vinod calling him Pulaya and physically harassed him is raised for the first time in the lawyer notice and in the complaint filed thereafter.

4. It is further pointed out that the private complaint has been filed on 31-10-2001, i.e. after about eight months of the incident. Summons has been issued to the petitioners after more than three years of the incident. It is pointed out that the complaint against the Principal has been dismissed. Really, the same reasons applies to the case of the petitioners as well. The

petitioners have also alleged that a number of illegalities and irregularities in the procedure adopted by the court below. It is contended that the court ought not to have permitted the complainant to be represented by counsel. It is pointed out that it was the complainant who filed an application for reopening the evidence. An advocate was appointed as the Commissioner to inspect the site and file a report. The doctor who conducted the post mortem examination was examined and the postmortem report was marked. The parties were allowed to produce documents and the final report was obtained by the court. Further, according to the petitioners, the above procedure is not permissible as per the provisions of the Cr.P.C. Further, according to the petitioners, the proceedings have been initiated only to grab a large amount as compensation. It is pointed out that the allegation that Vinod was subjected to physical harassment, bringing him near a jack tree, making him stand in the school compound in the sunlight is made deliberately so that the location is a public place so as to attract the provisions of the S.C.& S.T.(Prevention of Atrocities) Act and to bring in witnesses, who are interested i.e. one Soman and Santha residing about 60

feet north of the place. The above witnesses are persons with whom the civil proceedings are pending with the management of the school. S.A.No.89/2001 involving them is even now pending before the High Court. It is also pointed out that in the suicide note left by the deceased, there is no such allegation as raised in the complaint.

5. A counter affidavit has been filed by the first respondent/complainant pointing out that police after investigation referred the case only under the influence of the petitioners and the management of the school who are quite influential. The complainant had submitted representations before the D.G.P., Chief Minister, Governor, Prime Minister and the President of India and hence the Circle Inspector was directed to conduct further investigation. The same was also not an impartial one on account of the political influence of the school authorities. It is pointed out that the court below has conducted a detailed enquiry and only then proceeded against the petitioner/accused. The complainant/first respondent has also produced copy of the reply notice sent by the first respondent to the reply sent by the accused wherein it is mentioned that they

have no intention to settle the matter after receiving amounts from the petitioners as compensation.

6. I find that the contention of the counsel for the petitioners that the procedure adopted by the court below is illegal and is in violation of Section 202 Cr.P.C. is devoid of any merit. There is no bar that the complainant should not be represented by a counsel. There is no restriction that the counsel for the complainant should not file application before the court. There is no interdict that the court should not get documents summoned. The provision does not proscribe that an advocate should not be appointed to gather facts. Of course, Section 202, 1st proviso mentions that where the offence is triable exclusively by the Court of Sessions, the court should not issue directions for investigation. But in the instant case the court has not issued any such direction for investigation. In cases other than offence is triable exclusively by a Sessions Court, the court is competent even to appoint an Advocate Commissioner to conduct an investigation as clarified in **Madhavan Nambiar v. Bharathan, 1995(1)KLT 591.** In view of the bar contained in the first proviso to Section 202, such direction is not within the

competency of the committal court. But in the instant case the court has only directed the Advocate Commissioner to ascertain the place where the deceased were allegedly beaten up by the first petitioner with a belt. I find that none of the steps taken in the matter by the court below amounted to infraction of the procedure envisaged under Section 202 Cr.P.C. The reliance placed by the counsel for the petitioners on the decision reported in **Rosy v. State of Kerala, 2001 KLT 494(SC)** is totally misplaced.

7. On the other hand, I find that on a consideration of the materials produced that the allegation that the deceased committed suicide on account of abetment by the petitioners does not stand to scrutiny. On a perusal of the true copies of statements of the witnesses, the proceedings of investigation by the police as well as the statements of examination of the witnesses produced by the complainant for perusal, it is seen that the incident has taken place on 7-3-2001. The lawyer notice has been issued on 10-7-2001 wherein only the allegations of the beating up of Vinod by the first petitioner/teacher and the petitioners making the deceased stand in the sun light and the

petitioners and the Principal abusing the deceased that amounted to violation of the S.C. & S.T. (Prevention of Atrocities) Act have been raised. Copy of the complaint dated 31-10-2001 has also been produced. As already mentioned above, the Sub Inspector of police has conducted an investigation and filed a refer report which was affirmed in the subsequent investigation and report by the Circle Inspector of Police which is dated 16-9-2002. It is seen from the evidence of the Doctor who conducted the postmortem that the injuries found in the dead body were only those that was occasioned due to hanging. It has to be noted that the alleged belting of the deceased by the first petitioner has taken on the same day in the F.N, but there was no marks of beating on the dead body. In Annexure-B2 final report it is pointed out that the police surgeon has stated that the mark on the back of head of a healed wound cannot be the one that happened within 24 hours prior to the death. Annexure B final report also mentions that the statement of the complainant before the police was that the first petitioner beat his son from inside the class room which has been subsequently shifted to the venue under a jack tree and hence the statement of Santha, a

neighbour that she had seen the first accused beating the deceased with belt is false. On a perusal of the 161 statements and the statements of the examination of the material witnesses before the court, it can be seen that the statements before the court are totally different from the statements under Section 161 recorded after the incident. The statement of CW2 Nisha, the sister of the deceased, who is also a student of the particular school is totally contradictory to her statement to the police. The version of the complainant as well as that of his wife are only hearsay as to the alleged ill-treatment. The statement of CW5, a neighbour even mentions that the petitioners/accused made the deceased remove his shirt and stand in the scorching sun. None of the other witnesses have such a case that the deceased was made to remove his shirt. The allegation that the deceased was abused by calling his caste name is not at all mentioned in the F.I.statement and the consequent statements.

8. Mere pertinent is the statement of the deceased as contained in the suicide note. The statements in the letter addressed to his parents are all mainly with respect to his love affair. There is a sentence that says that the petitioners herein

are responsible for his impending death. The allegation is that they teased him in front of all others. There is no allegation that he was beaten or beaten up with belt. There is no allegation that he was made to stand in the fierce sunlight. There is no allegation that he was abused by calling his caste name in the suicide note. Counsel for the petitioners has relied on the decision of the Supreme Court in **Netai Dutta v. State of West Bengal, 2005 CrI.L.J.1737** wherein it has been held that in the absence of any specific incident mentioned it cannot be held that the suicide was abetted by the accused. The Supreme Court in the above case had dealt with a similar suicide note. It was held that an offence under Section 306 IPC would stand only if there is an abetment for the commission of the crime. The parameters of the 'abetment' have been stated in Section 107 of the Indian Penal Code. Section 107 says that a person abets the doing of a thing, who instigates any person to do that thing; or engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, or the person should have intentionally aided any act or illegal omission. The explanation to

Section 107 says that any wilful misrepresentation or wilful concealment of a material fact which he is bound to disclose, may also come within the contours of 'abetment'.

9. It has to be noted that the same allegation that the deceased was insulted by calling his caste name has been specifically alleged with respect to the first accused, the Principal. The court has found that the above allegation with respect to the Principal was not established prima facie. There is no reason for a different treatment with respect to the petitioners herein. It has also to be noted that Annexure-A F.I.S. which is his first version with respect to the alleged incident is absolutely silent as to the alleged torture and regarding the violation of the S.C. & S.T.(Prevention of Atrocities) Act. The delay in issuing summons to the petitioners is also to be deprecated. The delay amounts to more than three years since the date of the incident. I find that the allegations of torture and abetment to commit suicide appears to be the result of pre-meditation. The circumstances that resulted in the incident are such that the teachers might have chastised the boy. No school authorities would have ignored the behaviour of the deceased, who has brought a girl

student to the class room on a holiday, especially in the rural area where the school is situated. The impulsive nature of the deceased might have led him to commit the fatal act. In the circumstances and in view of the serious contradictions in the statement of witnesses and the belatedness in raising the allegations, it appears that the criminal proceedings have been initiated only to harass the petitioners/accused and hence the proceedings are liable to be quashed.

In the result, the proceedings in C.M.P.No.11800/2001 in C.P.No.271/2004 against the petitioners under Sections 324 and 306 read with Section 34 of the Indian Penal Code and Section 3 (x) of the S.C. & S.T.(Prevention of Atrocities) Act is herewith quashed. The Crl.M.C.is allowed.

K.R.UDAYABHANU, JUDGE

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